

2. Receipts from Coin-Operated Telephones Taxable (1995 Act 351, amend sec. 77.52(2)(a)5, effective August 1, 1996).

Telecommunications services paid for by the insertion of coins in a coin-operated telephone, when such services originate in Wisconsin, are subject to Wisconsin sales or use tax. Previously, such services were not subject to Wisconsin sales or use tax.

3. Definition of Motor Vehicle Dealer Expanded (1995 Act 329, amend sec. 218.01(1)(n)1 and 2 and create sec. 218(1)(o)5, effective October 1, 1996.)

The definition of "motor vehicle dealer" in sec. 218.01(1)(n), Wis. Stats., used by the Department of Transportation for licensing purposes, has been expanded to include any person, firm, or corporation, with certain exceptions, who:

1. For commission, money, or other thing of value, leases, offers, or attempts to negotiate a consumer lease of a motor vehicle.
2. Is engaged wholly or in part in the business of leasing motor vehicles, including motorcycles, whether or not such motor vehicles are owned by such person, firm, or corporation.

"Motor vehicle dealer" under sec. 218.01(1)(o), Wis. Stats., does not include sales finance companies when engaged in purchasing or otherwise acquiring consumer leases from a motor vehicle dealer.

The following sales and use tax provisions in ch. 77, Wis. Stats., specifically relate to motor vehicle dealers:

1. Section 77.53(1m), Wis. Stats., as created by 1995 Wis. Act 27, which provides the amounts used by licensed motor vehicle dealers in computing use tax on motor vehicles used by them for a purpose, in addition to retention, demonstration, or display, while holding them for sale or lease in the regular course of business.

For more information, see *Wisconsin Tax Bulletin 93*, page 12.

2. Section 77.56(2), Wis. Stats., which provides an exemption from use tax for the loan of a motor vehicle by a motor vehicle dealer to any school or school district for a driver training educational program conducted by the school or school district.
3. Sections 77.61(1) and 77.785(2), Wis. Stats., which require that licensed motor vehicle dealers collect and remit to the Department of Revenue the Wisconsin state, county, and stadium sales or use tax on the sale, lease, or rental of motor vehicles. In the case of motor vehicles purchased from a person who is not a licensed motor vehicle dealer, the purchaser of the motor vehicle pays the state, county, and stadium tax to the Department of Transportation at the time of registering the motor vehicle.

E. Withholding Tax

1. **Withholding from Unemployment Compensation** (1995 Act 118, create secs. 71.67(7), and 108.135, effective for unemployment compensation payments made on and after January 1, 1997.)

The Wisconsin Department of Industry, Labor, and Human Relations (DILHR) may permit individuals filing claims for unemployment compensation to elect to have Wisconsin income tax withheld from their benefit payments. Also, DILHR is required to advise each individual filing a new claim for unemployment compensation that the benefits they receive are subject to federal and Wisconsin income taxes.

F. Excise Taxes

1. **Underage Persons Allowed on Certain Licensed Premises** (1995 Act 334, amend sec. 125.07(3)(a)3, effective May 17, 1996.)

Additional exceptions are created to the prohibition of unaccompanied underage persons entering or being on premises having a license or permit for retail sale of alcohol beverages. Underage persons may now enter and be present in indoor golf simulator facilities which sell alcohol beverages, and outdoor volleyball courts that are contiguous to a licensed premises.

2. Free Samples of Alcohol Beverages at Trade Meetings (1995 Act 320, amend sec. 125.32(6)(a) and create secs. 125.33(2)(o) and 125.70, effective May 16, 1996.)

A brewer, intoxicating liquor manufacturer or alcohol beverage wholesaler may furnish for tasting, free of charge, samples of alcohol beverages to any person attending a trade show, conference, convention or similar business meeting of a bona fide national or statewide trade association that derives income from membership dues of certain alcohol retailers, if the meeting is held on premises that are licensed to sell and serve fermented malt beverages. Taste samples may not be furnished at more than 2 such events of any one trade association per year. Alcohol beverages brought on premises for distribution as taste samples may not remain on the premises after the close of the event.

3. Municipalities May Issue Additional Temporary Class "B" Licenses (1995 Act 282, amend sec. 125.26(6), effective May 9, 1996.)

Municipalities are authorized to issue a temporary Class "B" license for premises that are also covered by a "Class B" permit issued by the Department of Revenue.

A temporary Class "B" license authorizes the sale of fermented malt beverages (for consumption either on or off the premises where sold) at a particular picnic, meeting, fair, or other similar gathering. A "Class B" permit authorizes the sale of intoxicating liquor by the glass (for consumption on the premises where sold) to a concessionaire who conducts business in a public facility, such as an air-

port, coliseum, related exposition facilities, or arts center.

4. Sampling May Be Used to Determine Fuel Tax Liability (1995 Act 428, amend sec. 78.80(1), effective June 21, 1996.)

The Department of Revenue may determine any person's liability under chapter 78 (motor vehicle fuel, alternate fuels, and general aviation fuels tax) on the basis of sampling, whether or not the person being audited has complete records of transactions and whether or not the person being audited consents.

5. Changes to Excise and Occupational Tax Provisions (1995 Act 408, amend secs 78.70(7), 139.092 and 139.39(6), effective July 1, 1996, and amend sec. 78.75(1m)(c) and 139.84, effective June 21, 1996.)

The following changes are made:

- The statute of limitation period for excise and occupational tax purposes is clarified to provide that it begins on the due date of the excise or occupational tax report, not the due date of the taxpayer's Wisconsin income tax return. The statute of limitation provisions in sec. 78.70(7) for motor vehicle fuel, alternate fuels and general aviation fuel tax, sec. 139.092 for alcohol beverage taxes, and sec. 139.39(6) for cigarette and tobacco products taxes are provided by references to the statute of limitations in the Wisconsin income tax law.
- The amendment to sec. 78.75(1m)(c) changes the retention period from 3 years to 4 years for taxpayer records relating to claims for refunds of motor vehicle fuel and alternate fuel taxes.
- The amendment to sec. 139.84 of the tobacco products tax law corrects terminology used in a reference to motor vehicle fuel tax provisions. "Wholesalers of motor fuel" (terminology which is obsolete) is replaced with "suppliers of motor vehicle fuel."

G. Other

1. Revisor's Correction Bill Makes Non-Substantive Changes (1995 Act 225, effective May 1, 1996.)

The following changes are included in this Revisor's correction bill for the purposes indicated:

- Sec. 72.35(1) is amended to make it gender neutral and to conform its numbering with current style.
- Sec. 72.35(5) is amended to make it gender neutral.
- Sec. 77.52(14) is renumbered 77.52(14)(a)(intro.) and amended. This change subdivides the provision for greater readability and conformity with current style.
- Sec. 77.54(20)(a) is renumbered 77.54(20)(a)(intro.) and amended. This change subdivides the provision and replaces parentheses for greater readability and conformity with current style.
- Sec. 77.54(20)(a)12, 13, 15, and 16 are created to maintain text in its previously existing order.
- Sec. 125.04(5)(a)5, as affected by 1995 Act 23, is amended to reflect that the Vocational, Technical and Adult Education System has been renamed the Technical College System.
- Secs. 125.06(12) and 125.28(2)(b)2 are amended to correct cross-references.
- Sec. 139.10(2) is amended to delete parentheses and replace language for greater consistency with current style.
- Sec. 139.43 is amended to correct a spelling error.

2. Delinquent Taxes — Denial of Occupational License (1995 Act 233, amend secs. 71.78(4)(o), 77.62(1), 78.70(1)(intro.), 139.03(2x)(c), 139.03(4), 139.315(3), and 139.39(6) and create secs. 71.91(8), 73.03(28g), and 77.61(5)(b)10, effective for applications submitted to the Department of Regulation and Licensing to renew credentials that expire on or after May 3, 1996.)

The Department of Regulation and Licensing (DORL) and examining boards and affiliated credentialing boards attached to DORL (attached boards) issue certain professional and occupational credentials. A person who holds a credential issued by DORL or by an attached board (a credential holder) must renew his or her credential periodically (generally every 2 years). At the time a credential holder applies to renew a credential, DORL must determine whether the credential holder is liable for any delinquent taxes owed to the State of Wisconsin.

Prior law did not specify what it means for a credential holder to be liable for any delinquent taxes owed to this state. If the credential holder is liable for any delinquent taxes owed to this state, DORL must deny the person's application for renewal of the credential. A person whose renewal application has been denied is entitled to a hearing before DORL.

Act 233 makes the following changes in that part of the credential renewal process that relate to the determination of a credential holder's tax delinquency:

- The Act defines "liable for delinquent taxes" to mean that a person has been finally determined to be delinquent in the payment of specified state taxes (including income and franchise taxes, estate taxes and sales and use taxes) and that the person remains delinquent in the payment of those taxes at the time that DORL requests the Department of Revenue (DOR) to certify whether the credential holder is liable for delinquent taxes.

- The Act provides that, instead of making its own determination as to whether a credential holder is liable for any delinquent taxes, DORL must request DOR to certify whether a credential holder is liable for delinquent taxes.
 - The Act provides that, instead of having a hearing before DORL if his or her credential renewal application is denied due to tax delinquency, a credential holder is entitled to a hearing before DOR. The hearing before DOR is limited to the questions of: a) mistaken identity of the credential holder; and b) whether the credential holder has paid the delinquent taxes for which he or she is liable. If, after the hearing, DOR affirms its certification that the credential holder is liable for delinquent taxes, DORL must affirm its denial of the credential holder's renewal application. The credential holder may then seek judicial review of DORL's affirmance in the Dane County Circuit Court.
 - The Act provides that if a credential holder's renewal application was denied due to tax delinquency and he or she subsequently reapplies for renewal of his or her credential, DORL must deny the reapplication unless the credential holder submits a certificate from DOR that states that he or she is not liable for delinquent taxes.
 - The Act eliminates the requirement that a credential holder sign and submit to DORL a statement attesting that he or she is not liable for any delinquent taxes.
- 3. Refund Offsets Limited by Terms of Divorce Judgment** (1996 Act 418, renumber sec. 71.10(6m) to 71.10(6m)(a); amend sec. 71.80(3m)(b)3; and create sec. 71.10(6m)(b), effective for a judgment of divorce entered on or after June 21, 1996.)

The Department of Revenue may not apply an overpayment, credit, or refund otherwise due an individual against any tax liability owed to

the department by the individual or by the former spouse of the individual if:

- a judgment of divorce apportions that liability to the former spouse of the individual, and
- the individual includes with his or her tax return a copy of that portion of the judgment of divorce that relates to the apportionment of tax liability.

4. Provide Uniform Determination of "Date Delinquent" (1995 Act 428, amend secs. 71.91(1)(b) and 77.60(2)(c), effective June 21, 1996.)

An uncontested assessment for personal liability of withholding tax or an uncontested deficiency determination for sales and use tax shall become delinquent if not paid on or before the due date specified in the notice of deficiency.

Under prior law, these assessments or determinations were not delinquent until the first day of the calendar month following the calendar month in which the assessment or determination became final.

5. Penalty for Failure to File Information Return (1995 Act 428, create sec. 71.83(1)(a)1m, effective for taxable years beginning on or after January 1, 1996.)

If a person fails to file an information return required under subch. XI by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of \$10 for each violation. The penalty shall be waived if the person shows that the violation is due to reasonable cause and not due to wilful neglect.

Subchapter XI currently requires information returns for reporting certain stock transfers, rent or royalty payments, wages, and nonwage payments.

6. Define Date An Income Tax Return or Homestead Credit Claim is Considered Filed (1995 Act 428, amend secs. 71.03(2)(i)2, (j)1 and 2, (k), and (m)1 and 71.77(8) and create secs. 71.01(7u) and 71.738, effective June 21, 1996.)

Section 71.77(2), Wis. Stats., requires the department to give notice of assessments within 4 years of the date the taxpayer's income tax return or homestead credit claim was filed. Prior to being amended, sec. 71.77(8), Wis. Stats., provided that for purposes of sec. 71.77, Wis. Stats., a return filed before the last day prescribed by law for filing the return is considered filed on such last day.

Act 428 generally defines the "last day prescribed by law" as the unextended due date of the return or homestead credit claim. A return filed on or before the last day prescribed by law for the filing of the return is considered as filed on such last day, and a return filed after the last day prescribed by law is considered as filed on the date that the return is received by the Department of Revenue.

However, for purposes of filing joint returns under sec. 71.03(2)(e)1 and 2, Wis. Stats., for the taxable year in which the death of one or both spouses occurs, the "last day prescribed by law" includes extensions.

7. Controlled Substances Provisions Changed (1995 Act 448, amend secs. 125.12(2)(ag)5 and 6, 125.12(4)(ag)7 and 8, 139.34(1)(c)3, 139.37(1)(c)3, 139.87(2), (5) and (6), 139.88(1) and (1d), renumber sec. 161.01(14) to 961.01(14) and amend sec. 961.01(14) as renumbered, effective July 9, 1996.)

Act 448 makes a number of changes to various Wisconsin statutes which restrict the manufacture, distribution, and possession of controlled substances (i.e., dangerous drugs). Among these changes are the following:

- Restrictions on the manufacture, distribution, and possession of controlled substance analogs which are the same as those imposed by prior law on the manufacture,

distribution, and possession of controlled substances. Statutes which previously referred only to "controlled substances," including a number of statutes in the alcohol beverage and cigarette tax laws, have been amended to also refer to "controlled substance analogs."

- A change in the definition of "marijuana." The new definition provides that "marijuana" includes mature stalks if mixed with other parts of the plant. This change may increase the tax imposed by sec. 139.88(1), which is computed on the basis of the weight of the controlled substance in a dealer's possession.

8. Procedures Changed for Employers Withholding Delinquent Tax of Employes (1995 Act 428, amend sec. 71.91(7)(b), (d), and (h), effective September 1, 1996.)

Changes are made to the procedures which apply when an employer is required to withhold delinquent state taxes (including penalties, interest and costs). The changes are as follows:

- The notice to the employer may be served by mail or by delivery by an employe of the Department of Revenue. The certified mail requirement is eliminated.
- The department may direct the employer to withhold up to 25% of the compensation due an employe for any one pay period until the total amount as shown by the notice, plus interest, has been withheld. Under prior law, the department could arrange for withholding of not less than 10% or more than 25% of compensation due an employe.
- The employer (including an employer of an entertainer or entertainment corporation) shall remit the amount withheld on or before the last day of the month after the month during which an amount was withheld. Under prior law, the remittance was not due until the last day of the next month after every calendar quarter.